

Department of Agriculture

409.503

409.406 Debarment.

409.406-3 Procedures.

(a) *Investigation and referral.* When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for debarment, the case shall be immediately referred through the HCA to the debarring official. The case must be accompanied by a complete statement of the facts (including a copy of any criminal indictments, if applicable) along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter shall be referred to the HCA who should consult with the Office of Inspector General to determine if further investigation is required prior to referring to the debarring official.

(b) *Decision-making process.* If, after reviewing the recommendations and consulting with the Office of Inspector General and Office of the General Counsel, as appropriate, the debarring official determines debarment is justified, the debarring official shall initiate the proposed debarment in accordance with FAR 9.406-3(c) and notify the HCA of the action taken.

(c) *Fact-finding proceeding.* For actions listed under FAR 9.406-3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing. The hearing should be held at a location and time that is convenient to the parties concerned, if at all possible. The contractor and any specifically named affiliates may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings shall be conducted expeditiously and in such a manner that each party will have an opportunity to present all information considered pertinent to the proposed debarment. The contractor shall be provided a copy of a transcript of the proceedings under the conditions established in FAR 9.406-3(b)(2)(ii).

409.407 Suspension.

409.407-3 Procedures.

(a) *Investigation and referral.* When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for suspension, the case shall be immediately referred through the HCA to the debarring official. The case must be accompanied by a complete statement of the facts along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter shall be referred to the HCA who should consult with the Office of Inspector General to determine if further investigation is required prior to referring it to the debarring official.

(b) *Decision-making process.* If, after reviewing the recommendations and consulting with the Office of Inspector General and Office of the General Counsel, as appropriate, the debarring official determines suspension is justified, the debarring official shall initiate the proposed suspension in accordance with FAR 9.407-3(c) and notify the HCA of the action taken.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.407-3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing, similar in nature to the hearing for debarments as discussed in 409.406-3(c).

Subpart 409.5—Organizational and Consultant Conflicts of Interest

409.503 Waiver.

(a) The HCA, on a non-delegable basis, is authorized to waive any general rule or procedure in FAR 9.5 when in the Government's interest.

(b) Each request for waiver shall include:

(1) The general rule or procedure proposed to be waived;

(2) An analysis of the potential conflict, including the benefits and detriments to the Government and prospective contractors;